IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 35 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge and Appellate Judge?

==========

STATE OF GUJARAT - Appellant(s)
Versus
PORBANDAR MUNICIPALITY & ANR. - Respondent(s)

==========

Appearance :
Shri A.Y. Kogje, Asst. Government Pleader for Appellant(s).

None for Respondent(s) : 1.
Shri Viren G. Dave for Shri Yogesh S. Lakhani for Respondent(s) : 2.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/02/2007

ORAL JUDGMENT

1. The appeal has been admitted for hearing on the following

substantial questions of law:

> *"(1) Whether the lower courts were right in law in coming to the conclusion that the provisions of Section 65(2) of the Gujarat Municipalities Act, 1963 are not applicable to the present case?*
>
> *(2) Whether the Porbandar Municipality has legal right to sell the land without prior permission of the State Government?*
>
> *(3) Whether the impugned order passed by the District Collector, Junagadh is illegal and void?*
>
> *(4) Whether sale deed executed by the Porbandar Municipality in favour of the Co-operative Society is illegal as the Municipality has not sold it by public auction and whether this pint is concluded by the decision of this Court in the case of Bhajubhai H. Devani vs. Porbandar Municipality and others, reported in AIR 1984 (Gujarat) 134?*
>
> *(5) Whether the lower Courts were right in law in coming to the conclusion that the provisions of Section 258(2) of the Gujarat Municipalities Act, 1963 are not attracted to the facts of the present case?"*

2. The facts necessary for disposal of the present Second Appeal are that respondent No.2-plaintiff, Shiv-Shakti Co-operative Housing Society Limited, Porbandar, made an application to the Porbandar Municipality for allotment of the land. The Society got itself registered on 1st October, 1983 though the application was made on 3rd

June, 1983. The Municipality (original defendant No.2 and present respondent No.1) passed Resolution No.59 on 21st July, 1983 wherein it was resolved to allot 12 (twelve) plots to the original plaintiff/present respondent No.2. In accordance with the said resolution, a Sale Deed was executed and registered on 12th August, 1983, the possession of the said twelve plots was handed over to the Society, the land admeasured 1,572.11 sq. yards and the sale consideration was Rs. 94,326.70. It appears that one Khumansingh J. Zala made an application to the Collector submitting, *inter alia*, that the transaction was fishy and the Municipality had no authority to pass such a resolution or sell the land or execute the Sale Deed. The Collector issued an interim injunction on 29th November, 1983 and kept the resolution and the Sale Deed in abeyance. However, after hearing the Municipality, but, without any notice to the plaintiff/respondent No.2, the interim injunction granted on 29th November, 1983 was confirmed by the Collector.

2.1 The plaintiff - Society,being aggrieved by the final order dated 21st January, 1985, filed Regular Civil Suit No.120 of 1985 in the Court of the learned Civil Judge (S.D.), Porbandar for a declaration that the orders were illegal and an injunction against the State Authorities not to interfere with their possession.

2.2 The defendants appeared before the learned trial Court and contested the matter. After hearing the parties and recording the evidence, the learned trial Judge decreed the suit on 31st August, 1985 in favour of the plaintiff. The State, being aggrieved by the said judgement and decree, preferred Regular Civil Appeal No.17 of 1986, which was heard and decided by the learned Assistant Judge at Porbandar, who under the impugned judgement and decree, confirmed the judgement and decree passed by the learned trial Court, therefore, the State is

before this Court.

3. Shri Kogje, learned Counsel for the State-appellant, submits that in view of Section 258, read with Section 65(2), of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act" for the sake of convenience and brevity), the Collector would be entitled to interfere in a matter where he finds that the Municipality has acted contrary to the provisions of law and has parted with the land without any authority of law. His submission is that if the Court was of the opinion that no opportunity of hearing was afforded to the present plaintiff and a final order against the interest of the plaintiff was made, then, the learned trial Court, at the best, could set aside the final Order dated 21st January, 1985 and require the Collector to decide the matter afresh after hearing the plaintiff. His submission is that the Court could not set aside the orders dated 29th November, 1983 and 21st January, 1985 and hold that the plaintiff had become absolute owner of the property and the State was not entitled to take any action.

4. Shri Dave, learned Counsel for respondent No.2, on the other hand, submits that Section 258 and Section 65 of the Act would not apply to the present case. According to him, once the property is sold by the Municipality, then, no authority can take up the issue, nor could the authority hold that the resolution passed by the Municipality or the action taken by the Municipality was wrong.

5. Section 258 of the Act reads as under:

> ***258. Powers of Collector to suspend execution of orders, etc., of municipalities.*** **-** *(1) If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be*

done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof and where the execution of any work in pursuance of the order or resolution of the municipality is already commenced or completed direct the municipality to restore the position in which it was before the commencement of the work.

(2) When the Collector makes any order under this section he shall forthwith forward to the municipality affected thereby a copy of the order with a statement of the reasons for making it and also submit a report to the State Government along with copies of such order and statement.

(3) Against the order made by the Collector under sub-section (1) the municipality may prefer an appeal to the State Government within thirty days from the date on which it receives a copy of the order. The State Government may on such appeal being preferred rescind the order or may revise or modify or confirm the order or direct that the order shall continue to be in force, with or without modification, permanently or for such period as it may specify:

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the municipality reasonable opportunity of showing cause against the order."

Section 65 of the Act reads as under:

65. Powers of municipality to sell, lease and contract.- *(1) A municipality shall be competent, subject to the*

restriction contained in sub-section (2), to lease, sell or otherwise transfer any movable or immovable property which may, for the purposes of this Act, have become vested in or been acquired by it; and so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes.

(2) In the case of every lease or sale of land under sub-section (1) of section 146 and of a lease of immovable property for a term exceeding ten years and of every sale or other transfer of such immovable property, the market value of which excess one lakh of rupees, the previous permission of the State Government is required:

Provided that in the case of a lease or sale of land under sub-section (1) of section 146 no such permission shall be granted if such land forms a street or part of a street which has been declared to be a public street under section 148.

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) xxx xxx xxx xxx"

5.1 According to Section 65, a Municipality shall be competent to lease, sell or otherwise transfer any movable or immovable property subject to Sub-section (2). Sub-section (2) of Section 65 of the Act provides that in case of every lease or sale of land under Sub-section (1) of Section 146 and of a lease of immovable property for a term exceeding ten years and of every sale or other transfer of such immovable property, the market value of which exceeds one lakh of

rupees, the previous permission of the State Government would be required.

5.2 Section 258 clearly provides that if, in the opinion of the Collector , the execution of any order or resolution of a Municipality, or the doing of anything is causing or likely to cause injury or annoyance to the public, he may by an order in writing under his signature suspend the execution of the said act. It is also to be seen that under Section 257 of the Act, the Collector has powers of inspection and supervision.

5.3 A juxtapose reading of all the provisions would show that the Collector would have jurisdiction to entertain the application, but, grant of the application would depend upon availability of the material. In the present case, the learned Courts below erred in not appreciating that the Collector could entertain the objections filed by Shri Zala and could make an interim order of injunction, however, the Collector could not pass a final order against the interest of the present plaintiff/respondent No.2 without giving him an opportunity of hearing.

6. In view of the aforesaid discussion, each of the questions is not required to be decided separately. The order passed by the Collector dated 21st January, 1985 suffers with an apparent illegality because the said order violates the principles of natural justice. The Courts below were justified in holding that the Order dated 21st January, 1985 was bad in law, but, erred in holding that the Order dated 29th November, 1983 was also bad and that after sale of the property in favour of the society, no person or officer had any power or authority to look into the matter.

7. After hearing the parties, I must hold that the Collector's

Order dated 21st January, 1985 could not be approved and the learned Courts below were absolutely justified in setting aside the said order. However, further declaration given by the two Courts that the plaintiff has become absolute owner of the property and the State has no authority to look into the matter cannot be allowed to stand. The said part of the declaration is set aside.

8. The appeal is allowed in part to the extent indicated above. It is made clear that after setting aside of the Order dated 21st January, 1985, the Order dated 29th November, 1983 passed by the Collector would come into being and before confirmation of the said order, the Collector would be obliged to give an opportunity of hearing to the plaintiff.

9. The suit to the extent indicated above is decreed. It is further directed that the plaintiff shall appear before the Collector on 29th March, 2007 along with a copy of this judgement, informing the Collector what he is required to do. The plaintiff, after a notice from the Collector, would be entitled to raise all factual and legal pleadings before the Collector; he would be entitled to submit that in view of the language employed in Section 65/258, the Collector would have no jurisdiction to interfere in the matter and in the present set of circumstances, there would be no necessity to proceed further in the matter. However, this order shall not affect the jurisdiction and discretion of the Collector, who would be required to pass a speaking order after giving due opportunity of hearing to all the sides. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**